

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JIM KERN)	
Claimant)	
VS.)	
)	Docket No. 222,396
STATE OF KANSAS)	
Respondent)	
AND)	
)	
STATE SELF INSURANCE FUND)	
Insurance Carrier)	

ORDER

Respondent appeals from an Award entered by Administrative Law Judge Bruce E. Moore on December 29, 1998. The Appeals Board heard oral argument July 21, 1999.

APPEARANCES

Dennis L. Horner of Kansas City, Kansas, appeared on behalf of claimant. Richard A. Boeckman of Great Bend, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge found claimant was entitled to benefits for a 63.5 percent work disability based on a 63 percent task loss and a 64 percent wage loss. On appeal, respondent contends claimant failed to prove that he sustained accidental injury arising out of and in the course of employment. Respondent also argues that if claimant did sustain a compensable injury, the wage loss components of the work disability formula should be lower than that found by the ALJ. The imputed wage, respondent argues, should be based on the opinion of Ms. Karen C. Terrill rather than Mr. Richard W. Santner

because Mr. Santner considered only a limited local labor market and did not consider other equally close communities.

Claimant, on the other hand, argues that both the task loss and the wage loss should be higher. According to claimant the task loss is too low because it fails to account for the fact that certain of the tasks required that claimant work in an awkward position and this factor was not taken into consideration when determining which tasks claimant cannot now do. Claimant also contends the wage loss should be 100 percent but in any event not less than found by the ALJ, a finding which imputed minimum wage.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed. The Board affirms the decision for the reasons stated in the findings and conclusions by the ALJ which are hereby adopted by the Board as its own. In specific response to the issues raised on appeal, the Board agrees with the ALJ's conclusion that the evidence claimant suffered accidental injury arising out of and in the course of employment is essentially uncontroverted and is supported by medical opinion.

Respondent's principal contention on appeal relates to the wage loss component of work disability. The ALJ imputed minimum wage for a full-time job after finding that claimant was not making an effort to find employment. This conclusion took into consideration opinions by both Ms. Terrill and Mr. Santner. Respondent argues that Mr. Santner's opinion should be rejected because he considered only employment in a limited geographic area. But the ALJ did not fully adopt Mr. Santner's opinion. Mr. Santner believed it unlikely that claimant would obtain more than part-time work earning from \$120 to \$150 per week. On the other hand, the ALJ did not fully accept the opinion of Ms. Terrill who opined the loss would be from 38 to 44 percent. The Board agrees that it was appropriate to consider some other communities but also notes that claimant's injury makes it difficult to travel long distances regularly and does not believe that adding other nearby labor markets would have a significant impact on the wage. The Board agrees that Mr. Santner's opinion overstates the loss while Ms. Terrill's understates the loss and consequently affirms the finding that claimant suffered a wage loss of 64 percent.

As to the task loss, claimant contends the ALJ failed to account for changes in the opinions of the two physicians. According to claimant, both Dr. Ali B. Manguoglu and Dr. Edward J. Prostic eliminated additional tasks based on information that the tasks involved working in awkward positions. But it appears the ALJ did take this testimony into consideration. For example, the Award states that Dr. Prostic eliminated 16 of 23 tasks and this is the adjusted number which takes into account the change if the work was in an awkward position. The Award also states that Dr. Manguoglu's testimony can be read as eliminating three additional tasks. It also appears the resulting higher percentages were

used, in part, to arrive at the 63 percent task loss. The Board concludes the ALJ's finding of a 63 percent task loss should be affirmed.¹

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore on December 29, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dennis L. Horner, Kansas City, KS
Richard A. Boeckman, Great Bend, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director

¹ The Board notes what appear to be minor errors in Ms. Terrill's task list and in the numbers the ALJ derived from Dr. Manguoglu's deposition. Ms. Terrill counts 16 tasks (55 percent) as eliminated by Dr. Prostic's restrictions when she has actually identified 17 of the 29 (59 percent). This error is adopted by the physicians and the ALJ, but the ALJ actually uses the correct percentage, 59 percent. In addition, the ALJ mentions the fact that Dr. Manguoglu's testimony can be read as eliminating three additional tasks and it appears the ALJ is referring to the task list of Mr. Santner. The ALJ uses Mr. Santner's numbers. But Dr. Manguoglu's deposition testimony reviews the specifics of Ms. Terrill's list, not Mr. Santner's, and can arguably be read to eliminate three additional tasks from Ms. Terrill's list. While a change of three tasks from Ms. Terrill's list makes slightly less percentage difference than it would in Mr. Santner's, the difference is considered insignificant in the overall work disability.